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temperature controlled device at a second temperature when the detected status is human absent."

Schanin does not describe nor suggest a method for operating a temperature controlled device, wherein the method includes the steps of detecting a human presence status, wherein the human presence is in an area distant to the temperature control device, controlling the temperature controlled device at a first temperature when the detected status is human present, and controlling the temperature controlled device at a second temperature when the detected status is human absent. Moreover, Schanin does not describe nor suggest a method detecting a human presence status, wherein the human presence is in an area distant to the temperature control device. Rather, Schanin describes a method of monitoring temperature within a refrigerated chamber and an attached sensor for monitoring occupancy in the vicinity of the chamber. For the reasons set forth above, Claim 1 is submitted to be patentable over Schanin.

Claims 6 and 7 depend directly from independent Claim 1. When the recitations of Claims 6 and 7 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 6 and 7 are likewise patentable over Schanin.

Claim 14 recites a method for fabricating a temperature controlled device, wherein the method includes "providing a human presence detector in an area distant to the temperature control device...and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status."

Schanin does not describe nor suggest a method for fabricating a temperature controlled device, wherein the method includes providing a human presence detector in an area distant to the temperature control device and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status. Specifically, Schanin does not describe nor suggest a method for fabricating a temperature controlled device, wherein the method includes providing a human presence detector in an area distant to the temperature control device. Rather, Schanin describes a method of monitoring temperature within a refrigerated chamber and an attached sensor for monitoring occupancy in the vicinity of the chamber. For the reasons set forth above, Claim 14 is submitted to be patentable over Schanin.

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Claim 16 depends directly from independent Claim 14. When the recitations of Claim 16 are considered in combination with the recitations of Claim 14, Applicant submits that dependent Claim 16 likewise is patentable over Schanin.

Claim 18 recites a method for fabricating a control unit for a temperature controlled device, wherein the method includes the steps of "providing a control unit...and coupling a human detector in an area distant to the control unit such that the control unit controls the temperature controlled device based on a human presence status."

Schanin does not describe nor suggest a method for fabricating a control unit for a temperature controlled device, wherein the method includes the steps of providing a control unit and coupling a human detector in an area distant to the control unit such that the control unit controls the temperature controlled device based on a human presence status. Specifically, Schanin does not describe nor suggest a method including coupling a human detector in an area distant to the control unit such that the control unit controls the temperature controlled device based on a human presence status. Rather, Schanin describes a method of monitoring temperature within a refrigerated chamber and an attached sensor for monitoring occupancy in the vicinity of the chamber. For the reasons set forth above, Claim 18 is submitted to be patentable over Schanin.

For the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 1, 6, 7, 14, 16, and 18 be withdrawn.

The rejection of Claims 3, 5, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Schanin in view of Carrell et al ("Carrell") or Cross is respectfully traversed. Claim 5 has been canceled.

Schanin is described above. Carrell describes a room temperature control system that includes a transmitter-receiver unit for producing an acoustic standing wave pattern in a room. The unit also produces a signal when a motion in the room disturbs the pattern.

Cross describes an apparatus for activating climate control systems in response to the entry or absence of persons in a dwelling. The sensor is either a motion or thermal energy detection unit which emits a signal in response to the presence of person(s) within a room.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that

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it would have been an obvious to one of ordinary skill in the art to modify Schanin according to the teachings of Carrell or Cross. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

[I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaack, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991).

In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown. Accordingly, since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 3 and 15 be withdrawn.

Furthermore, Applicants respectfully submit that no motivation for the combination can be found within Schanin, Carrell, and Cross, as Schanin, Carrell, Cross teach away from each other. Rather, Schanin describes a method of monitoring temperature within a refrigerated chamber and an attached occupancy sensor for monitoring occupancy in the vicinity of the chamber. The occupancy sensor is located on the device. Notably, Schanin

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does not describe a method for detecting a human presence status, wherein the human presence is in an area distant to the temperature control device.

In contrast to Schanin, Carrell describes a room temperature control system that includes a motion detector in an area distant to the room temperature control system.

Cross teaches an apparatus for activating climate control systems in response to the entry or absence of persons in a dwelling. The infrared sensor is located on the apparatus. Specifically, Cross does not describe nor suggest an infrared sensor that is located in an area distant to the climate control system.

If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966); Gillette Co. v. S.C. Johnson & Son, Inc., 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. More specifically, because Applicants respectfully submit that Schanin teaches away from Carrell and Cross, and as such, there is no suggestion or motivation to combine Carrell or Cross with Schanin.

Further, and to the extent understood, no combination of Schanin, Carrell, nor Cross describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 3 depends from Claim 1 recites a method for operating a temperature controlled device, wherein the method includes the steps of "detecting a human presence status, wherein the human presence is in an area distant to the temperature control device...controlling the temperature controlled device at a first temperature when the detected status is human present...and controlling the temperature controlled device at a second temperature when the detected status is human absent."

The combination of Schanin, Carrell, and Cross does not describe nor suggest a method for operating a temperature controlled device, wherein the method includes the steps of detecting a human presence status, wherein the human presence is in an area distant to the temperature control device, controlling the temperature controlled device at a first temperature when the detected status is human present, and controlling the temperature controlled device at a second temperature when the detected status is human absent.

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Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Schanin in view of Carrell or Cross.

Claim 3 depends from independent Claim 1. When the recitations of Claim 3 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claim 3 likewise is patentable over Schanin in view of Carrell or Cross.

Claim 15 depends from Claim 14 which recites a method for fabricating a temperature controlled device, wherein the method includes "providing a human presence detector in an area distant to the temperature control device...and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status."

The combination of Schanin, Carrell, and Cross does not describe nor suggest a method for fabricating a temperature controlled device, wherein the method includes providing a human presence detector in an area distant to the temperature control device and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status. Accordingly, for at least the reasons set forth above, Claim 14 is submitted to be patentable over Schanin in view of Carrell.

Claim 15 depends from independent Claim 14. When the recitations of Claim 15 are considered in combination with the recitations of Claim 14, Applicants submit that dependent Claim 15 is likewise patentable over Schanin in view of Carrell or Cross. Claim 5 has been canceled.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 3, 5, and 15 be withdrawn.

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In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: George Mazereeuw

Art Unit: 3744

Serial No.: 09/681,929

Examiner: William Wayner

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For: METHODS AND CONTROL
UNIT FOR TEMPERATURE
CONTROLLED DEVICES

SUBMISSION OF MARKED UP CLAIMS

Mail Stop: Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Submitted herewith are marked up claims in accordance with 37 C.F.R. Section 1.211(c)(1)(ii).

IN THE CLAIMS

1. (twice amended) A method for operating a temperature controlled device, said method comprising the steps of:

detecting a human presence status, wherein the human presence is in an area distant to the temperature control device;

controlling the temperature controlled device at a first temperature when the detected status is human present; and

controlling the temperature controlled device at a second temperature when the detected status is human absent.

14. (once amended) A method for fabricating a temperature controlled device, said method comprising:

providing a human presence detector in an area distant to the temperature control device; and

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coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status.

18. (once amended) A method for fabricating a control unit for a temperature controlled device, said method comprising the steps of:

providing a control unit; and

coupling a human detector in an area distant to the control unit such that the control unit controls the temperature controlled device based on a human presence status.

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